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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,751	10/01/2001	Emmanuelle Belli	13833.0008	3618

7590 07/16/2002

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1330 Connecticut Ave., N.W.
Washington, DC 20036

EXAMINER

BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/16/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,751

Applicant(s)

BELLI, EMMANUELLE

Examiner

Mojdeh Bahar

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04/29/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Applicant's response to the first office action of January 28, 2002, submitted April 29, 2002 (Paper No. 6) is acknowledged.

Applicant's remarks and amendment submitted April 29, 2002 in Paper No. 6 are persuasive to remove the claim objections and the rejection under 35 U.S.C. 112, 2nd paragraph in the previous office action.

Newly submitted claims 26-39 are herein examined on the merits.

Specification

The amendment filed April 29, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "N,N-di- (C2-C12)- alkylacrylamide" in subsection (a) and "acrylic acid" in line 2 of subsection (b) of page 2; "acrylic" in the last paragraph of page 3; "acrylic" in line 1 of section (b) of page 4; and "acrylic in section (a) following the Table of page 8 of the specification. Note that the specification provides support only for (meth)acrylic or methacrylic acid not for acrylic polymer. Applicant is required to cancel the new matter in the reply to this Office Action. ✓

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 26-39 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The base claim 26 and claims 27 and 39 contain the following: "N,N-di- (C2-C12)- alkylacrylamide" , "N-mono- (C2-C12)- alkylacrylamide" and "the polymer having a structure comprising hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units", "acrylic acid" and "bifunctional monomer". These are not supported by the disclosure as originally filed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midha et al. (USPN 5,986,015).

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Midha et al. (USPN 5,986,015) teaches a cosmetic composition comprising polymers of monomers such as acrylic acid, methacrylic acid, acrilamide, see col. 6, line 63 to col. 7 line 47. Midha et al. (USPN 5,986,015) also teaches a hair styling gel comprising 2.5 weight percent of Graft copolymer 1.2 (which comprises methacrylic acid and tert-butyl acrylate), 0.5 weight percent Carbomar 940 (a thickening agent), see particularly col. 17 lines 23-26 and col. 19, example 17. Midha et al. (USPN 5,986,015) further teaches the addition of optional ingredients such as xanthan gum (a polymeric thickener) to its cosmetic hair composition, see col.16, lines 14-26. Midha et al. (USPN 5,986,015) teaches that the concentration of optional ingredients will typically and collectively range from 0.05% to 30% by weight of the composition, see particularly col. 14, lines 36-46. Midha et al. (USPN 5,986,015) that the cosmetic composition is suitable for application to hair, see col. 11 line 59 in particular.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the claimed branched block copolymer and the thickeners claimed herein in a cosmetic hair gel composition.

One of ordinary skill in the art would have been motivated to employ the because claimed branched block copolymer and the thickeners claimed herein in a cosmetic hair gel composition because the polymer as well as the thickeners are taught by examiner's cited prior art to be used in cosmetic hair gel compositions.

Response to Arguments

Applicant's arguments filed April 29, 2002 have been fully considered but they are not persuasive. Applicant argues that the instant invention would not have been obvious to a Skilled Artisan in possession of teachings of Midha et al. because the Skilled Artisan would have had to

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replace the Graft polymer 1.2 by a branched co-polymer and would have had to add a second non-cellulosic thickener to Midha et al.'s composition. Note that thickeners are known to be readily employed in the cosmetic art and their employment is within the purview of the Skilled Artisan, absent a showing of criticality of the particular thickening agent or agents. No such evidence is seen. As to replacing the Graft copolymer with a branched block copolymer, applicant's attention is drawn to the definition of Graft copolymer provided in Midha: ^{2af}~~Graft~~ copolymers are characterized by a hydrophilic or hydrophobic polymeric backbone with a plurality of hydrophobic or hydrophilic polymeric side chains covalently bonded to and pendant from the polymeric backbone, see in particular col.5, lines 14-25. The Skilled Artisan can therefore perceive a distinction without a difference between the Graft copolymer employed in Midha et al and the branched block copolymer herein.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from Monday to Friday from 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar
Patent Examiner
July 12, 2002

RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200